



**THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
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**PETITION FOR CLARIFICATION OR ADMENDMENT (CAS)
WRITTEN INVESTIGATION PROCEDURE**

A. Initial Filing

The petitioner must submit its written evidence and arguments to the Executive Secretary of the Commission either at the time of filing a Petition for Clarification or Amendment (CAS) or within twenty (20) calendar days from the date of the Commission's Notice that a Petition for Clarification or Amendment has been docketed.

B. Submission Requirements (including time deadlines):

(1) Information Required of Petitioner

The submission should be clearly labeled "**CAS Petitioner's Written Submission,**" and must contain:

- (a) Statement of Purpose: A clear and concise statement of the relevant facts constituting the CAS petition, including a description of the current bargaining unit, the number and title of the disputed position(s), the date on which the incumbent Employee Organization was first certified (including case number) or recognized, the execution date and term of the current collective bargaining agreement, the date the Employer created the petitioned-for positions and the date the petitioner had notice of the creation of the petitioned-for position(s). The written submission must be signed, and the signer must affirm that the information in the written submission is true to the best of the signer's "information and belief."
- (b) Supporting Information and Documents: The petitioner must provide supporting information and documents to enable the Commission to evaluate the petition within the context of the Employer's organizational structure and bargaining history. This includes a copy of the most recent collective bargaining agreement, a description of all other bargaining units within the Employer's jurisdiction, including their current or most recent terms and copies of the recognition clauses in those agreements. The petitioner must also submit an organizational chart showing the petitioned-for position(s) and a job description(s). The petitioner must include any other indicia for a community of interest including hours, pay, education, certification and experience required at hire, supervision received and exercised, interchange with other employees in the existing bargaining unit and position description(s) for employees who perform similar functions.

- (c) Other Information: The petitioner should include any additional information concerning the petitioned-for position(s) including whether the position(s) were in existence when the Commission certified or the Employer recognized the existing bargaining unit, any changes in the duties and responsibilities or reporting relationship of the position(s), and, if the position(s) existed prior to the most recent collective bargaining agreement, a description of the parties' discussions regarding unit placement of the position(s) during contract negotiations or other information relevant to the Commission's processing of the case.

(2) The CAS Petition Respondent's Response

Any response which the respondent wishes to make must be written and must be filed with the Executive Secretary with a copy to each other party within twenty (20) calendar days after having received a copy of the petitioner's written submission. The Response should be labeled "**CAS Petition Respondent's Response**" and include the Commission's case number.

- a) Information and Documents: If the respondent does not dispute the information and documents submitted by the petitioner, the respondent should notify the Commission that they are not disputed. The respondent may contradict, clarify or supplement any information and/or documents submitted by the petitioner.
- b) Contract Bar: If the respondent is invoking a contract bar pursuant to 456 CMR 14.06(1)(b), it should file a statement with the Commission identifying the reasons therefore, and support its assertions with sworn statements of facts (which can be sworn as true based upon the signers "information and belief") and documentary evidence where applicable.
- c) Managerial or Confidential Statutory Exclusion: If the respondent is claiming that the position(s) is managerial, it should file a statement and any supporting material indicating how the incumbent of the position(s) participates to a substantial degree in formulating or determining policy, assists to a substantial degree in the preparation for or conduct of collective bargaining or has a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration. If the respondent is claiming that the position is confidential, a statement and supporting material should be submitted that demonstrates the degree to which and how the incumbent of the position(s) assists and acts in a confidential capacity to a person or persons otherwise excluded from coverage under the Law.

(3) Intervenors

- a) Any employee organization that moves for intervention pursuant to 456 CMR 12.03 may also file a written statement in support of its position concerning the CAS petition. The statement must be accompanied by all documentary evidence on which the intervenor relies. The intervenor must file all statements and supporting evidence with the Executive Secretary and provide a complete copy to all other parties to the case within twenty (20) days of

receiving of a copy of the petitioner's submission to the Commission or within ten (10) days of receipt of a copy of the respondent's submission.

- b) Parties to the case must state whether they oppose or do not oppose any motion to intervene either when they file their written submission or within ten (10) days of receiving of the motion, whichever is later. Motions to intervene usually are decided after receipt of all written submissions. Employee Organizations who have moved to intervene shall be treated as "parties" for the purpose of serving documents prior to the Commission's ruling on their motion to intervene.

(4) Petitioner's Reply

The petitioner will have ten (10) calendar days from receipt of the respondent's submission to file a written reply with the Executive Secretary and with all other parties to the case. The written reply must fully explain any disagreement with the facts and statements made in the respondent's response. If the petitioner disputes facts alleged by the respondent, the petitioner must identify the disputed facts and must include relevant sworn affidavits and, where appropriate, documentary evidence to support the petitioner's position.

(5) Unopposed Extensions of Time

Parties may extend by mutual agreement any time for filing by giving the Commission written notice of the time extension to which they have agreed. All such extensions are limited to a combined total of three months per case, except for good cause when permitted by the Commission.

(6) Opposed Requests

Any request for Commission permission to extend the time for filing that is opposed by another party to the case must be filed in writing with the Executive Secretary at least three (3) days prior to the date when the submission is due and must contain the position of the other party(ies) concerning the request.

C. Commission Response

After review of the parties' submissions, the Commission will determine if there is a dispute of material fact. If the Commission determines that there are no material facts in dispute, it will issue a notice to the parties to show cause why the Commission should not make a determination on the petition based on the parties' submissions. Based on the parties' response(s), the Commission will issue a decision based on the parties' written submissions or hold a hearing to resolve the material dispute of facts.

The Commission may contact the parties at any time to schedule an informal conference to clarify any information submitted.

D. Exceptions to Written Investigation Procedure

The Commission may grant a request to conduct an informal conference and/or hearing in-lieu of the written investigation procedure only in extraordinary circumstances and for good cause.

E. General Filing Requirements

- (1) When referenced in this Notice, the term “day” shall mean calendar days, including Saturdays, Sundays and legal holidays (456 CMR 11.06). All times are calculated according to Commission Rule 12.07(1) which specifies:

In computing any period of time prescribed or allowed by these rules and regulations, the day of the act, event, or default when the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday including Suffolk County legal holidays.

- (2) All filings with the Commission shall be made in accordance with Commission Rule 12.11 which specifies:

(1) All pleadings, written motions, briefs, or memoranda filed by any party in connection with any matter pending before the Commission shall be on paper measuring eight and one half (8 ½) inches in width and eleven (11) inches in length.

(2) All pleadings, written motions, briefs, and memoranda shall be typewritten and double-spaced.

(3) An original and two¹ copies of all pleadings, written motions, briefs, or memoranda shall be filed with the Commission.

(4) All documents shall be deemed filed upon receipt by the Commission.

- (2) **All filings must also contain a certificate of service.** 456 CMR 12.02.

¹ Although Rule 12.11 requires submission of an original and two copies of documents filed with the Commission, the Commission has decided to suspend application of the rule to written investigation materials for the convenience of the parties. Please submit one copy of any long document, such as a collective bargaining agreement, or evidence such as affidavits. Please submit an original and two copies of all other documents containing legal arguments or factual narratives.